TCEQ DOCKET No. 2007-0598-AIR

RE: PERMIT ALTERATION	§	**BEFORE THE**	2007 MAY 30 PM 3:52
PERMIT NO. 4381/PSD-TX-3	§	**TEXAS COMMISSION ON**	CHIEF CLERKS OFFICE
WELSH POWER STATION	§	**ENVIRONMENTAL QUALITY**	

SOUTHWESTERN ELECTRIC POWER COMPANY'S REPLY BRIEF IN RESPONSE TO MOTION TO OVERTURN

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

COMES NOW Southwestern Electric Power Company ("SWEPCO") and respectfully submits its Reply Brief responding to the Supplemental Brief of the Sierra Club and Public Citizen ("Movants"), and the Responses of the Texas Commission on Environmental Quality ("TCEQ") Executive Director and Office of Public Interest Counsel ("OPIC").

The question Movants have asked the Commissioners to answer in their Motion to Overturn ("Motion"), and upon which their Motion is based, is whether the Executive Director should have required a permit amendment to delete the heat input references in Special Conditions 2-4 of Permit No. 4381/PSD-TX-3 and to add language to Special Condition 6 clarifying that the 0.5% sulfur limit is to be applied on a "wet" (as opposed to a "dry") basis. In its Response to the Motion, the Executive Director strongly supported his determination that a permit amendment was not required to make such permit changes, and that a permit alteration was appropriate to make them. Neither Movants nor OPIC have presented any new information or arguments that, together with the information and arguments in Movants' Motion, support the Commissioners granting the Motion and overturning the Executive Director's March 20, 2007 issuance of the alterations to Permit No. 4381/PSD-TX-3.

I. Deletions of Heat Input References

Neither Movants nor OPIC present any new information or arguments that the Executive Director was not aware of when he determined that the heat input references in Special Conditions 2-4 could be deleted using a permit alteration.

Movants erroneously suggest that due to General Condition 1 of pre-altered Permit No. 4381/PSD-TX-3 and Condition 4 of the original Unit 1 permit, and to the references to 5,156 MMBtu/hr in the permit application materials that Movants cite in their Supplemental Brief, the Executive Director should have required a permit amendment to delete the references to 5,156 MMBtu/hr in Special Conditions 2-4. First of all, Condition 4 of the original Unit 1 permit (which was issued on October 10, 1973) is no longer effective because it was superseded by General Condition 1.[1]

Movants suggestion is also wrong relative to General Condition 1, which provides in part that "the facilities covered in this permit shall be constructed and operated as specified in the application for the permit". First, based on its language, that condition would apply to the heat input references in the permit application materials only if those references related to how the units would actually be constructed or operated. They did not. Instead, they related to how the units were "designed" to operate. Specifically, Movants erroneously state that the June 12, 1973 Sargent and Lundy report "unequivocally bases the particulate matter[2] emission rate on the 'maximum Unit 1 heat input of 5,156 MMBtu/hr'".[3] (Movants' Supplemental Brief, pg. 3). In truth, the only particulate matter ("PM") rate mentioned in the report is 0.1 lb/MMBtu. The heat input of 5,156 MMBtu/hr was <u>not</u> used to calculate that rate. On the contrary, as the Sargent and Lundy report states (a mere two sentences below the language Movants quote), the source of the 0.1 lb/MMBtu PM emissions rate was the federal New Source Performance Standards limit for PM (in 40 CFR 60.42(a)(1)). In addition to that error, Movants failed to mention the clear

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[1] Specifically, the original Unit 1 permit was superseded by the renewed Unit 1 permit that was issued on June 22, 1994, which itself was superseded by the consolidated permit, Permit No. 4381/PSD-TX-3, which was issued on September 10, 1998.

[2] The report refers to particulate matter as "fly ash".

[3] Attachment A to Movants' Supplemental Brief contains only portions of the June 12, 1973 Sargent and Lundy report. In addition, Attachment B contains portions of the May 1, 1976 original state permit application for Units 2 and 3 that state that the Sargent and Lundy report relates to the Units 2 and 3, as well.

references on p. 3 and in Exhibit 4 of the Sargent and Lundy report that the heat input of 5,156 MMBtu/hr is the "design" heat input,[4] as contrasted to an actual heat input value. That failure seems strange since Movants include as Attachments C and D, portions of the Units 2 and 3 permit renewal applications[5] that clearly refer to 5,156 MMBtu/hr as being the "design" heat input to the units. As SWEPCO discussed in its Brief in Response to the Motion ("Brief"), the "design" heat input of 5,156 MMBtu/hr was not intended to constitute the maximum heat input that the Welsh units can achieve in actual operations. (SWEPCO Brief, p. 7). Since the beginning of the Welsh units' operation, they have been able to operate, and have regularly operated, at heat inputs above 5,156 MMBtu/hr. (*See* Exhibits 11 and 12 to SWEPCO's Brief).

Secondly, General Condition 1 did not require that a permit amendment be used to delete the heat input references in Special Conditions 2-4 because that condition is merely a restatement of §116.116(a)-(b), and those provisions did not require a permit amendment for such changes. Even if it was true that the references to 5,156 MMBtu/hr were representations as to how the units would actually operate, or were permit limits, under §116.116(b)[6], a permit amendment would not have been required to delete them unless exceeding 5,156 MMBtu/hr "will cause" an increase in emissions from the units. Movants seem to concur based on their assertion that deleting the heat input references to 5,156 MMBtu/hr "will increase emissions." (Emphasis added) (Movants' Supplemental Brief, p. 5). The only support Movants give for that assertion is a statement that heat input "directly affects how much pollution" (i.e., emissions) occurs from the units. (*Id.*). Both the Executive Director's Response and SWEPCO's Brief present

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[4] Specifically, the sentence immediately before the language Movants quote from page 4 states "Exhibit 4 indicates the design parameters and values which were assumed for the calculation for the ground-level concentrations." (Emphasis added). Plus, Exhibit 4, which Movants failed to include in Attachment A to their Supplemental Brief, is entitled "Plant Design Parameters." (Emphasis added).

[5] SWEPCO included those same pages in its Brief as Exhibits 8 and 9, and it discussed them on page 6 of its Brief. Movants' description of Attachment D in the table on page 4 as "Feb. 27, 1997 Renewal for Unit 2" apparently should instead refer to the November 19, 1997 Renewal for Unit 3.

[6] Section 116.116(b)(1) reads as follows:

> Except as provided in subsection (e) of this section, the permit holder shall not vary from any representation or permit condition without obtaining a permit amendment if the change will cause:
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> (A) a change in the method of control of emissions;
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> (B) a change in the character of the emissions; or
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> (C) an increase in the emission rate of any air contaminant.

qualitative and quantitative information that contradicts Movants' assertion by demonstrating that there is no direct relationship between heat input to and emissions from the units.[7] Based thereon, the Executive Director correctly concluded that no emissions increase "will" occur from any of the units due to the deletion of the heat input references from Special Conditions 2-4. Movants present no qualitative or quantitative information in support of the opposite conclusion that they espouse. Furthermore, the deletion of the heat input references from Special Conditions 2-4 will not allow the units' emissions to exceed levels that they have previously achieved. Therefore, General Condition 1 did not, as Movants suggest, require a permit amendment for such deletions.

OPIC suggests that it was inappropriate to use a permit alteration to delete the heat input references in Special Conditions 2-4 if those references "are necessary for a protective permit" (OPIC Response, p. 4). Section 116.116(b), however, contains no language supporting that suggestion. In any event, the heat input references in Special Conditions 2-4 are not necessary for the permit to be "a protective permit" since an air permit's protectiveness is related solely to the impact the emissions from the facility(ies) authorized by the permit might have on human health and the environment. In light of that, the provisions of the permit that make it protective of human health and the environment are the emissions limits. None of the emissions limits in the permit were increased by the permit alteration. Moreover, there is no evidence that during their normal operations, the emissions from any of the units exceeded their permit emissions limits, even during the times when the units' heat inputs exceeded 5,156 MMBtu/hr. In addition, SWEPCO has demonstrated to the satisfaction of the Executive Director that there is no relationship between the heat input to, and the emissions from, the units such that deleting the heat input references from Special Conditions 2-4 "will cause" an increase in emissions from the units. (SWEPCO's Brief, pp. 8-10). Therefore, deleting those heat input references did not cause the permit to cease to be a protective permit. That would seem to address OPIC's suggestion that it was inappropriate for the Executive Director to have deleted those heat input references using a permit alteration.

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[7] *See* the discussion from the last paragraph on page 3 through the table on page 4 of the Executive Director's Response, and from the bottom of page 8 to the middle of page 10 of SWEPCO's Brief.

Movants make several statements questioning SWEPCO's assertion that the heat input references in Special Conditions 2-4 are ambiguous. (Movants' Supplemental Brief, p. 5). Movants question why "after more than 20 years of operation, [SWEPCO] finds ambiguity in its heat input-related permit conditions". The answer to that question is that until the TCEQ alleged (around May, 2004) that the heat input to the units was not allowed to exceed 5,156 MMBtu/hr, SWEPCO never considered Special Conditions 2-4 to be ambiguous. SWEPCO always believed (and still believes) the language of those conditions merely referenced the design heat input, and clearly did not prohibit the heat input from exceeding 5,156 MMBtu/hr.

Movants also suggest that the reference to "heat input limit" in Special Condition 2, which only applies to Unit 1, removes any ambiguity that the 5,156 MMBtu/hr is a limit for all three units. (Movants' Supplemental Brief, p. 5). The following discussion of the history of Special Condition 2 shows that Movants are wrong because that discussion demonstrates that the term "heat input limit" (i) can only refer to the Unit 1 SO_2 emissions limit in that condition, which is a "heat input-based" limit since its units are in lb/MMBtu, and MMBtu is a measurement of heat input, and (ii) cannot refer to the heat input reference of 5,156 MMBtu/hr in that condition.

The purpose of Special Condition 2 is to specify the heat input-based SO_2 emissions limit for Unit 1 (in units of lb/MMBtu). The original version of that condition was Special Condition 3 in the renewed permit for Unit 1 (Permit No. 1166), which was issued on June 22, 1994. That condition provided that "Sulfur dioxide (SO_2) emissions shall not exceed 1.2 lb/MMBtu. The heat input limit is based upon fuel higher heating value." Since that permit condition did not even mention 5,156 MMBtu/hr (and, in fact, no condition in the permit mentioned 5,156 MMBtu/hr), the only possible conclusion is that the term "heat input limit" in that condition referred to the "heat input-based" SO_2 emissions limit in that condition (since that limit's units were in lb/MMBtu); there is no indication that the term "heat input limit" referred to the design heat input of 5,156 MMBtu/hr. As part of the renewal process for the Unit 3 permit (No. 4381), the agency consolidated the renewed permit for Unit 1 (and the renewed permit for Unit 2) with the renewed permit for Unit 3 to create a consolidated permit (Permit No. 4381/PSD-TX-3). From the date the consolidated permit was issued (September 10, 1998) until the March 20, 2007 alteration, Special Condition 2 read as follows: "Sulfur dioxide (SO_2) emissions from the stack

of the Unit 1 boiler, designated as Emission Point No. (EPN) 1, shall not exceed 1.2 lb/MMBtu while firing at full load (5,156 MMBtu/hr, nameplate capacity: 558 MW). The heat input limit is based upon higher heating value of the fuel." Based on a comparison of such language to the language in Special Condition 3 of the renewed Unit 1 permit, the only language of any substance that was added during the Unit 3 renewal/consolidation process was "while firing at full load (5,156 MMBtu/hr, nameplate capacity: 558 MW)". The apparent origin of the term "while firing at full load" was Special Condition 2 of the renewed Unit 2 permit, which was the first place that phrase appeared in any permit condition relating to the lb/MMBtu SO_2 emissions limits for any of the units. The parenthetical reference to "(5,156 MMBtu/hr, nameplate capacity: 558 MW)" was added to Special Condition 2 of the consolidated permit (and, also to Special Conditions 3 and 4, which apply to the Units 2 and 3) during the Unit 3 renewal/consolidation process in order to define "full load"; there is no indication that it was added to establish 5,156 MMBtu/hr as a limit. Based on the foregoing, there is no indication that there is any connection between the reference in the second sentence of Special Condition 2 to "heat input limit" and the parenthetical reference in that condition to 5,156 MMBtu/hr. Therefore, the history of Special Condition 2 shows that the reference in it to "heat input limit" did not relate to, and was never intended to relate to, 5,156 MMBtu/hr.

Finally, Movants suggest that deleting the heat input references to 5,156 MMBtu/hr in Special Conditions 2-4 will lead to "compliance problems" because Special Condition 16 provides that heat input "may be used to determine compliance" with the mass emissions limits in the Maximum Allowable Emissions Rate Table ("MAERT").[8] (Movants' Supplemental Brief, p. 6.) Movants specifically discuss this concern relative to the PM emissions limit based on their statement that there have not been "routine stack tests for PM". Movants' concerns are unfounded. The word "heat input" in Special Condition 16 does not refer to the heat input references to 5,156 MMBtu/hr; instead, it refers to the actual heat input to a unit during a

[8] Movants correctly state that Special Condition 16 provides that hourly heat input "may", rather than "shall", be used to determine compliance with the emissions limits in the MAERT. The use of the word "may" demonstrates that heat input should not be used in such manner unless it is appropriate to do so. Use of heat input in such manner is not appropriate due to the lack of a direct relationship between the heat input to and emissions from the units, as SWEPCO demonstrated both qualitatively and quantitatively in on pages 8-10 of its Brief. Such a direct relationship is required for the emissions calculated using the heat input to be accurate and appropriate for determining compliance with the emissions limits in the MAERT.

particular time frame. Therefore, deleting the references to heat input of 5,156 MMBtu/hr will not impact Special Condition 16 or, thus, cause the "compliance problems" that Movants assert. Furthermore, Movants' specific concern regarding the impact of deleting the heat input references on determining compliance with the PM emissions limits, is also unfounded, because stack testing is the only appropriate way to determine compliance with the PM emissions limits. Heat input cannot be used to do so due to the lack of a direct relationship between heat input and emissions (as SWEPCO demonstrated both qualitatively and quantitatively in on pages 8-10 of its Brief). And, contrary to Movants' assertion of "no routine PM stack testing", Special Condition 29 of the permit does require SWEPCO to conduct routine PM stack testing to demonstrate compliance with those limits.

II. Clarification of 0.5% Sulfur Limit

Only Movants challenge the Executive Director's use of a permit alteration to add language to Special Condition 6 to clarify that the 0.5% sulfur limit is to be applied on a "wet basis."[9] Movants present no new information or arguments in their Supplemental Brief that the Executive Director was not aware of and did not consider when he was determining that the 0.5% sulfur limit in Special Condition 6 is applied on a "wet basis."[10]

III. Conclusion

There has still been no legal or factual basis presented, and none exists, for the Commission to overturn the Executive Director's March 20, 2007 issuance of alterations to Permit No. 4381/PSD-TX-3 to delete the references to heat input from Special Conditions 2-4 and to add language to Special Condition 6 clarifying that the 0.5% coal sulfur limit is applied on

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[9] OPIC stated that it cannot "conclude that the Executive Director erred in granting a permit alteration to clarify how the sulfur content is to be measured". (OPIC Response, page 4).

[10] In fact, Movants' discussion of the 0.85 lb/MMBtu SO_2 emissions calculated using the 0.5% sulfur limit on a dry basis specifically supports the Executive Director's and SWEPCO's conclusions that the 0.5% sulfur limit in Special Condition 6 is applied on a wet basis.

a "wet basis." Therefore, SWEPCO re-asserts its request that the Commission deny Movants' Motion or allow it to be denied by operation of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Southwestern Electric Power Company's Reply Brief in Response to Motion to Overturn* has been filed with the Office of the Chief Clerk, Texas Commission on Environmental Quality, and copies provided to the persons listed on the attached Mailing List via hand delivery on the 30th day of May, 2007.

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